



JTPA

Number: D96-20

Serving the People of California

DIRECTIVE

Date: April 2, 1997

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TO: SERVICE DELIVERY AREA ADMINISTRATORS
PRIVATE INDUSTRY COUNCIL CHAIRPERSONS
JTPD PROGRAM OPERATORS
EDD JOB SERVICE OFFICE MANAGERS
JTPD STAFF

SUBJECT: INSTRUCTIONS--PY 1997-98 ALLOCATIONS, PLAN MODIFICATION,
AND SYETP GUIDANCE

EXECUTIVE SUMMARY:

Purpose:

This Directive provides instructions and transmits forms necessary for completing the second year modification to the 1996-1998 Title II Job Training Plan and the Title III Substate Plan. In addition, this Directive transmits Program Year (PY) 1997 (July 1, 1997 through June 30, 1998) funding allocations for Titles II-A, II-C and III, and **Fiscal Year (FY) 1997** for the Title II-B Summer Youth Employment and Training Program (SYETP). The allocations also were transmitted to Service Delivery Areas (SDA) with Information Bulletin B96-105 (February 26, 1997). These allocations are to be used in completing the second year modification. Finally, this Directive provides SYETP guidance and includes as an attachment the Department of Labor (DOL) Training and Employment Guidance Letter (TEGL) 3-96, regarding the 1997 summer youth program.

Scope:

This Directive applies to the Title II Job Training Plan and Title III Substate Plan for PY 1997.

Effective Date

This Directive is effective immediately.

REFERENCES

- Job Training Partnership Act (JTPA) Sections 104 (c) and 105.
- Title 20 Code of Federal Regulations (CFR) Section 627.235(c)
- Title 20 CFR Part 28, Subpart G, The Summer Youth Employment and Training Program

- TEGL 3-96, Subject: Program Guidance and Allocations for the Calendar Year 1997 Summer Youth Employment and Training Program, January 28, 1997
- TEGL 7-95, Subject: JTPA Intertitle Transfers of Funds, July 31, 1996
- Family Economic Security Act (FESA)/California Unemployment Insurance Code (CUIC) Section 15045
- JTPA Directive D95-30, Subject: Eligibility Determination and Verification for Titles II, III, and IV-C, February 22, 1996
- JTPA Directive D95-31, Subject: Instructions - Program Years 1996 and 1997 Title II Job Training Plan and Title III Substate Plan, March 6, 1996
- JTPA Directive D96-18, Subject: JTPA Fund Transfers, February 18, 1997

STATE-IMPOSED REQUIREMENTS:

State-imposed requirements are printed in ***bold italic type***.

FILING INSTRUCTIONS:

Retain this Directive until further notice.

BACKGROUND:

The JTPA Section 104(c) states that factors requiring a substantial deviation from an approved Job Training Plan shall require the joint submittal by the Private Industry Council (PIC) and the appropriate Chief Elected Official(s) of a modification of the plan. The addition of the second year funding constitutes such a deviation. The Governor is required to review and approve Job Training Plan modifications in accordance with JTPA Section 105.

The DOL TEGL 3-96 provides 1997 SYETP allocations to the states and guidance for 1997 summer program. The total obligation to the states of \$871 million represents a significant increase over the \$625 million provided for the prior year, as does the allotment to the State of California of \$150,622,655, compared with the prior year amount of \$111,142,107.

The TEGL states a twofold DOL vision for the new entrants into the labor force and youth with limited job histories who will be served by the summer program:

1. To build and refine a strong work foundation which encompasses employment competencies and the discipline of work; and,
2. To gain an appreciation of the connection between work and learning which is crucial to a long-term attachment to and success in a rapidly changing labor market.

The DOL stresses that the connection between work and learning is consistent with the ongoing School-to-Work message communicated by DOL and the Department of Education to states, SDAs, local school systems, employers, and youth. The main

goals of the 1997 SYETP (see attached TEGL 3-96, page 3, number 4 "Program Goals and Objectives") include maximizing the number of economically disadvantaged youth participating in the summer program by achieving at least 90 percent of planned enrollments and utilizing all available funding, including new monies and carryover funds. Additionally, the guidance reemphasizes the need for meaningful worksites and the provision of educational enrichment opportunities. The DOL also states the importance of continuing to strengthen linkages between the SYETP, Title II-C, and School-to-Work initiatives. Finally, the guidance reminds SDAs to work with the private sector to provide more unsubsidized employment opportunities for economically disadvantaged youth.

POLICY AND PROCEDURES:

Job Training Plan Modifications:

1. Policy and Procedures for preparing the Title II Job Training Plan and Title III Substate Plan and modifications are contained in the Job Training Plan and Substate Plan Handbook of Instructions for Program Years 1996 and 1997, as amended by the forms and instructions transmitted with this Directive. Modifications should only include those pages of the plan that need to be changed. It is not necessary to resubmit pages previously submitted unless there is a subsequent change to any of the information. Changes normally considered "adjustments" may also be included with the modification, if desired.
2. ***Planned participant levels and expenditures for all funds in PY 1997-98 must be included and recorded on the appropriate participant and budget forms attached for Part II and Part III. Complete a separate form for each funding source, following the guidance in the Handbook of Instructions sent with Directive D95-31. If you are contemplating a transfer of funds from one funding source to another, complete Part II-Section 8, A. (copy attached), following the instructions in JTPA Directive D96-18. In addition, complete Section 8, B., Available Funding Profile for PY 1997, following the instructions beginning on page 43, Part II of the Handbook of Instructions.***
3. ***If there are any other substantial deviations or significant changes from the approved Job Training Plan which require local public review and comment and joint approval/submittal by the SDA's Private Industry Council and Chief Elected Official (for example, a redesigned Title II-B summer program, based on the guidance in this Directive), then the applicable sections of the Job Training Plan and Substate Plan must be revised and included as part of the modification (Handbook of Instructions, General Instructions, page 6).***

1997 SYETP Guidance:

The SDAs should carefully review the full text of TEGL 3-96 for an understanding of the DOL goals, requirements, and guidance regarding the 1997 SYETP. The following highlights some of the major provisions of the TEGL, with additional federal and State guidance included as appropriate.

Procurement:

This procurement section applies only to the 1997 SYETP. Wherever possible, SDAs shall select service providers based on a competitive process. However, SDAs that will not be able to complete a competitive procurement process in time to enter into contracts to effectively serve youth for the summer of 1997, have several alternatives available to them. SDAs with:

- Existing contracts that include one or more option years may choose to extend these contracts.
- ***Extensions on existing contracts are permitted even if the SDA will be entering into a contract with a provider for a fifth year of service. (Current State policy requires that no contract extend past three years without a new competitive procurement process.)***

The law and the regulations require the SDA to consider the program operators' past performance/ability to perform of the program operator and the reasonableness of costs for all these alternatives. The SDA must fully document the decision and provide justification in the procurement file.

Transfers:

The DOL TEGL 7-95 allowed for the transfer of unrestricted amounts of PY 1996 and PY 1997 Title II-C funds to FY 1996 and FY 1997 Title II-B and vice versa. Funds transferred are transferred in total (i. e., without regard to cost limits), and SDAs must use the funds in accordance with the appropriate Title II-B or Title II-C rules of the receiving Title or Part. Transfers can be made at any time during the appropriated life of the funds. However, a transfer must be made within the appropriated years and according to the transfer rules applicable to that year of appropriation. For example, FY 1996 Title II-B funds can only be transferred to PY 1996 Title II-C and vice versa, and FY 1997 Title II-B funds can only be transferred to PY 1997 Title II-C (after July 1, 1997) and vice versa. Refer to JTPA Directive D96-18, Subject: JTPA Fund Transfers, for further guidance on fund transfer requirements and procedures.

Funds Utilization:

The SDAs are required to spend a minimum of 80 percent of the funds available in the period of October 1, 1996, through September 30, 1997.

For the Title II-B program, funds available include:

- *the allocation for that program year; and*
- *any additional funds allotted to the SDA during the program year; and*
- *any funds unexpended from the previous program year; and*
- *less any deobligations or transfers.*

The 80 percent expenditure requirement will be calculated based on reports due to JTPD on December 31, 1997, for the corresponding program year. The JTPD will implement the necessary recapture by a unilateral subgrant modification to the program year's allocation.

Months of Operation:

While Section 254 of the Act provides that SYETP can only operate in the summer months or in an equivalent vacation period where there is a year-round school system, DOL indicates that intake and planning can occur before school ends. Youth may be concurrently enrolled in Title II-B and Title II-C; however, employment in SYETP may not begin before the beginning of the school vacation period. When the SDA wishes to serve out-of-school youth prior to the local school vacation period, the SDA may choose among the following approaches:

1. operate an employment program for out-of school youth before the end of the school year under Title II-C, using existing Title II-C funds or transferred funds from Title II-A or Title II-B;
2. develop a program of concurrent enrollment (Title II-B and Title II-C); and/or,
3. use Wagner-Peyser or locally funded staff to do job development and placement for this group before school ends.

Eligibility:

As in prior years, SDAs may conduct planning and intake prior to the beginning of the vacation period. See JTPA Directive D95-30, Subject: Eligibility Determination for Titles II, III, and IV-C (issued February 22, 1996) for specific guidance related to eligibility requirements.

Enrollment:

Title 20 CFR Section 627.235(c) allows SDAs to enroll eligible applicants into a summer youth enrollee pool within 45 days of eligibility determination with no requirement that subsequent eligibility determination need be made prior to participation during the period of that summer program.

Objective Assessment and Individual Service Strategy (ISS):

The objective assessment process and the resultant development of the ISS may begin once the applicant is enrolled into the enrollee pool. At a minimum, the assessment must include the examination of basic skills (reading and math plus any others deemed appropriate) and supportive services needs. The SDAs may use school records on math and reading levels to determine basic skills. As allowed by Title 20 CFR Section 628.515(b)(2), the fully developed objective assessment is not required for participants enrolled in Title II-B only. Similarly, for participants enrolled in SYETP only, the fully-developed ISS is not required. For those participants transferring to the year-round program under Title II-C, the full objective assessment and ISS are required.

The TEGL 3-96 states that the DOL will not recommend any particular assessment device. The SDAs must determine locally what instruments are most effective according to their local circumstances. The pre- and post-testing of educational attainment is strongly encouraged, but not required. Title 20 CFR Section 628.705(b) requires that SYETP participants must be assured the availability of basic or remedial education and preemployment and work maturity skills.

Program Design:

The TEGL 3-96 states that work-based learning and classroom-based learning must complement and reinforce one another so that the youth are provided with assistance in developing positive work attitudes, values, and habits. While some SDAs may create a program design providing educational services only, with no work experience, the TEGL requires that these designs must include some form of work-related experience such as vocational exploration, job shadowing, simulated workplaces, or other similar activity. Any such program design must be explained in the Job Training Plan approved by the State. Some designs may integrate work and learning to the point that all learning is acquired on the job. The DOL suggests that this approach is most useful for older youth who do not suffer from serious educational deficiencies.

The DOL states that SDAs should coordinate SYETP with School-to-Work ("School-to-Career" in California) partnerships in the development of School-to-Work components, including school-based learning, work-based learning, and other components. The DOL strongly encourages the strengthening of linkages between Title II-B and the Title II-C year-round program, and states that the ability to transfer funds between the two funding sources facilitates the strengthening of these linkages.

While the JTPA regulations allow for limited private sector internships and entry employment experience, DOL cautions that there are certain inherent "vulnerabilities" to such activities, including: a) the perception of favoritism in choosing one employer over another; b) the placement of youth in jobs they may have attained on their own; and c) the displacement of noneconomically disadvantaged youth from jobs they would have had during the summer. The DOL therefore states that SDAs should maintain documentation on why particular employers were chosen or not chosen as worksites.

In addition, SDAs are encouraged to operate their internship programs in tandem with their voluntary private sector summer jobs campaign to ensure that these programs complement rather than compete against each other.

The SDAs are encouraged to incorporate “life skills” or individual development training components into the summer program. The DOL cites the SCANS Foundation Skills and Competencies as models for such individual development which may be integrated with learning on the job and in educational settings. However, stand-alone personal development activities, while allowable, are not to be considered part of the education component.

Job Safety and Health:

The SDAs should review federal, state and local safety and job health standards and child labor restrictions to ensure that participants are not assigned to activities that violate these standards or restrictions. The DOL TEIN 33-92 provides a summary of child labor restrictions. In addition, the State Department of Industrial Relations has published a booklet summarizing child labor laws in California.

Private Sector Summer Jobs and the Work Opportunity Tax Credit (WOTC):

The TEGL 3-96 encourages SDAs to involve the private sector in providing summer jobs programs, including use of the WOTC. See pages 8 through 10 of the TEGL for further information. The Job Training Partnership Division will soon be issuing guidance regarding policy and procedures for WOTC certification for JTPA in California.

Compensation:

The Minimum Wage Increase Act of 1996 applies to participants in all JTPA programs. Effective October 1, 1996, not less than \$4.75 an hour must be paid for employment under JTPA and not less than \$5.15 an hour beginning September 1, 1997. The new Opportunity Wage created by the Minimum Wage Increase Act, \$4.25 an hour for the first 90 days a youth under 20 is initially employed, does not apply to JTPA programs. ***The California Labor Code (Section 1182.11) requires a minimum wage of \$5.00 per hour effective March 1, 1997. This section also requires a minimum of \$5.75 per hour effective March 1, 1998. Therefore, all participants enrolled in wage-paid JTPA activities (e.g., work experience) on or after March 1, 1997, including the 1997 SYETP, must be paid not less than \$5.00 per hour; those enrolled on or after September 1, 1997, must be paid not less than \$5.15 per hour; and those enrolled on or after March 1, 1998, must be paid not less than \$5.75 per hour.***

Section 627.305 of the regulations uses the term “training payment” or “training payment for combined activities” instead of the term “wage” to reflect the rare circumstances when a participant may not be in an employer-employee relationship as defined by the Internal Revenue Service (IRS), and also to make clear that the SDA may not be required to make a payment equal to the minimum wage. A subset of these “training payments” is “work-based training payments.” Section 627.305(d) states that these work-based training payments may be wages.

The determination of whether payments are training payments or wages rests upon whether participants are “employees.” Typically, an employer-employee relationship exists if the employer has the right to control, direct, and discharge the employee and if the employee receives compensation according to the employer’s general rate structure. If the employer-employee relationship exists and the participants receive compensation for services performed, then this compensation is wages.

The 1997 SYETP participants may be compensated for both worksite and classroom activities. Participants do not have to spend more than half of their time for combined activities in the worksite setting in order to receive compensation as do Title II-C participants. The SYETP employees engaged in work activities where there is an employer-employee relationship shall be paid training payments that comply with federal, state, and local laws governing wage payments. When participants are paid wages, they are subject to normal withholding of taxes applicable to similarly situated employees. While TEGL 3-96 is silent on whether training payments for classroom activities, bonuses and incentives are taxable, the State recommends that these payments be treated as taxable income unless an SDA obtains a waiver from the IRS for their specific situation.

Regarding payment for work experience, the DOL has stated that the IRS is solely responsible for determining whether any given compensation is subject to Social Security taxes. While the IRS has not issued blanket guidance about whether work experience is subject to the Federal Insurance Contributions Act (FICA) deductions, the State recommends that these deductions be made unless an SDA obtains a waiver from the IRS for their specific situation.

For classroom training activities, participants may be:

- paid training payments at the same level as payments for work experience and subject to the same rules governing the payment of wages; or
- provided with training payments equal to work-based training payments--or less; or
- provided with incentive and bonus payments only--or in addition to the previously mentioned payments; or
- paid nothing at all.

If an SDA plans to use bonus and incentive payments, this intention must be clearly stated in its two-year plan. Use of these payments must be indicated under Part II-Section 9 Assessment, Referral, Services, Competencies, C. Services, subsection (3), paragraph (c) Incentive and Bonus Payments. If an SDA's two-year plan has been completed without indicating the planned use of bonus and incentive payments, it must be included as part of the second year modification.

Follow-up Services:

Under the Final Rule, SDAs shall make available to participants Follow-up Services authorized in the ISS for a period of up to one year after program participation. This includes any concurrent period of subsequent participation in the Title II-C program. Title II-B funds may be used for the delivery of these services. These Follow-up Services shall include the full array of supportive services described in Section 4(24) of JTPA excluding financial assistance.

Reporting:

The Title II-B allocations provided with this Directive are for FY 1996-97. For expediency, the state will issue these funds to the SDAs as a unilateral modification to the PY 1996 master subgrant (G700XXX) under the new grant code 330. Cash draw downs can be made immediately upon completion of the subgrant modification. These funds must be accounted for separately from all other Title II funds for PY 1996 or PY 1997. More detailed reporting requirements for all funding sources will be provided by the State under a separate transmittal.

ACTION:

1. Prepare necessary modifications to the Title II Job Training Plan and Title III Substate Plan, in accordance with the Job Training Plan and Substate Plan Handbook of Instructions for Program Years 1996 and 1997, as complemented by this Directive.
2. No later than April 12, 1997, publish the modification, or summary thereof, and make it available for review and comment in accordance with the requirements of the JTPA, the FESA/CUIC, and the Job Training Plan and Substate Plan Handbook of Instructions for Program Years 1996 and 1997, as amended by this Directive. Refer to the General Instructions in the Handbook for information regarding the requirements for preparing and publishing plan modifications. Refer to page 5 for minimum publication requirements. The public hearing requirement established in Section 15045 of FESA/CUIC applies only to the initial plan and does not apply to subsequent plan modifications.
3. Submit plan modifications to the State by 5 p. m., Friday, May 2, 1997:

Mail:

Employment Development Department
Job Training Partnership Division
Attn: Program Management Section
P. O. Box 826880, MIC 69-1
Sacramento, CA 94280-0001

Overnight Mail:

Employment Development Department
Job Training Partnership Division
Attn: Program Management Section
800 Capitol Mall, MIC 69-1
Sacramento, CA 94814

Hand Deliver:

Employment Development Department
Job Training Partnership Division
Attn: Program Management Section
722 Capitol Mall, Room W1077
Sacramento, CA 94814

4. Bring the SYETP guidance, including the attached DOL TEGL 3-96, to the attention of all affected staff.

INQUIRIES:

Please direct questions about developing your Title II Job Training Plan and Title III Substate Plan modification to your Program Manager.

/S/ BILL BURKE
Acting Chief

Attachments are not available online. To obtain a copy e-mail JTPD at **JTPDLIB@EDD.CA.GOV** or contact Jim Scholl at (916) 657-4610.

1. JTPA Final Allocations for Program Year 1997
2. Part II - Section 8, Program Planning Budgets
3. Form I, 1996-98 Job Training Plan, Planning Budget\Participant Summary
4. Form II-95, 1996-98 Job Training Plan, Planning Budget\Participant Summary
5. Form III-95, 1996-98 Job Training Plan, Planning Budget\Participant Summary
6. Form IV (Title II-B), 1996-98 Job Training Plan, Planning Budget\Participant Summary
7. Form V (Title II-B), 1996-98 Job Training Plan, Planning Budget\Participant Summary
8. Form VI, 1996-97 Job Training Plan, Planning Budget\Participant Summary
9. Part III - Section 8, Title III Participant Plan
10. Part III - Section 9, Title III Budget
11. Department of Labor, Training and Employment Guidance Letter 3-96